

PROPOSED ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “**Agreement**”) is entered into by, between and among Marathon Title Insurance Company, a Texas corporation (“**Escrow Agent**”), the City of San Antonio, Texas (“**City**”) and Lumbermen’s Investment Corporation, a Delaware corporation (“**Developer**”) as of _____, 2002. The Cibolo Canyon Conservation and Improvement District No. 1 (“**District**”) shall execute and ratify this Agreement as of the Election Date, as defined in the Development Agreement, by and among City and Developer and subject to the execution and ratification of the District (the “**Development Agreement**”). The Developer, City, and District are sometimes referred to herein as the “**Parties.**”

Recitals

A. Pursuant to Senate Bill 1629, Acts of the 77th Legislature of the State of Texas, Regular Session, 2001 (“**Act**”), the Legislature of the State of Texas established the District as a conservation and reclamation district encompassing certain real property (“**Land**”) owned by Developer. The establishment of the District by the Legislature is subject to a confirmation election of the District as more particularly set forth in the Act.

B. City and Developer have entered into the Development Agreement, with respect to the development of the Land. The effectiveness of Development Agreement is subject to execution and ratification by District as of the Election Date (as defined in the Development Agreement).

C. The Parties have provided in the Development Agreement for the escrow of certain documents, pursuant to Section 1.01(c) of the Development Agreement, until such time as certain events have taken place, as described in Paragraph 7 below.

D. The Parties desire to enter into this Agreement to set forth their respective obligations, and Escrow Agent joins herein for the purpose of acting as an escrow agent for the Parties with respect to holding, releasing and recordation of said documents during the development of the Land.

E. Terms not otherwise defined herein shall have the same meaning as stated within the Development Agreement.

Agreement

In consideration of the promises and of the mutual covenants and undertakings hereinafter made, the Parties and Escrow Agent hereto agree as follows:

1. Escrow of Documents. The following documents shall be deposited in escrow with the Escrow Agent in the manner set forth below, which documents are referred to collectively herein as the “*Escrowed Documents*”:

(a) A conservation easement (the “*Conservation Easement*”), in favor of the City, encumbering certain tracts of land owned by Developer and located within the District which are to be designated as Open Space;

(b) A lease agreement by and between District and City for the purpose of constructing and operating a fire station (the “*Fire Station Tract Lease*”);

(c) A lease agreement by and between District and City for the purpose of operating and maintaining a trail head for access to Open Space (the “*Trail Head Tract Lease*”); and

(d) An agreement between City and District for the provision of fire protection (the “*Municipal Services Agreement*”);

2. Escrow by Developer. Developer shall deposit the Conservation Easement, duly executed and acknowledged by Developer, with Escrow Agent, no later than the Execution Date, as such term is defined in the Development Agreement:

3. Escrow by City. City shall deposit with Escrow Agent the following documents, duly executed (and acknowledged, if applicable), no later than the Execution Date:

(a) The Conservation Easement, duly executed and acknowledged by City;

(b) The Fire Station Lease, duly executed by City;

(c) The Trail Head Tract Lease, duly executed by City; and

(d) The Municipal Services Agreement, duly executed by City.

4. Escrow by District. District shall deposit with Escrow Agent the following documents, duly executed (and acknowledged, if applicable) on or prior to the Election Date:

(a) The Fire Station Tract Lease, duly executed by District;

(b) The Trail Head Tract Lease, duly executed by District; and

(c) The Municipal Services Agreement, duly executed by District.

5. Obligations and Compensation of Escrow Agent. Escrow Agent

agrees to accept the Escrowed Documents and release the Escrowed Documents only in accordance with the terms of this Agreement. The fees of the Escrow Agent for serving under this Escrow Agreement shall be [_____ Dollars (\$_____)], plus reimbursement of all out-of-pocket costs. The Developer and City shall be equally responsible for all escrow fees to the Escrow Agent and shall be responsible to reimburse the Escrow Agent for any expenses incurred by the Escrow Agent in connection with its services under this Escrow Agreement. Reimbursement of such expenses shall be due immediately upon receipt of the Developer and City of an invoice from the Escrow Agent specifying the nature and amount of such expenses.

6. Release of Escrowed Documents. The Parties instruct the Escrow Agent to hold and release the Escrowed Documents in the manner set forth below. Any notices required herein (i) from the City, shall be made by the Director of Development Services for the City; (ii) from the Developer, shall be made by the President of the Developer; and (iii) from the District, shall be made by a member of the Board of Directors of the District:

(a) Conservation Easement: Hold until the receipt of a written request of release by Developer (the “**Release Request**”) and then distribute fully-executed counterparts to City, District and Developer on the first business day following the Release Request or as soon as possible thereafter. City, and not the Escrow Agent shall be charged with the obligation of recording the Conservation Easement in the Official Public Records of Real Property in Bexar County, Texas.

(b) Fire Station Tract Lease: Hold until the earlier of (i) the occurrence of the Hotel Completion Date (as used herein the “**Hotel Completion Date**” shall be as defined in the Development Agreement), as evidenced by a written notice, executed by all Parties (the “**Hotel Completion Notice**”) or (ii) the receipt of a written notice, executed by all of the Parties of a mutually acceptable alternative date which is prior to the Hotel Completion Date, then distribute fully-executed counterparts to City and District.

(c) Trail Head Tract Lease: Hold until the earlier of the receipt of (i) the Hotel Completion Notice or (ii) a written notice, executed by all of the Parties of a mutually acceptable alternative date which is prior to the Hotel Completion Date, then distribute fully-executed counterparts to City and District.

(d) Municipal Services Agreement: Hold until the earlier of the receipt of (i) the Hotel Completion Notice or (ii) a written notice, executed by all of the Parties of a mutually acceptable alternative date which is prior to the Hotel Completion Date, then distribute fully-executed counterparts to City and District.

7. Execution of Escrow Instructions. In performing the escrow and

release of the Escrowed Documents as set forth in Section 6, Escrow Agent may rely upon any of the written notices from the named representative of the appropriate Parties, as required pursuant to each of the requirements set forth in Section 6.

8. Concerning the Escrow Agent. The Parties agree that the following provisions shall control with respect to the right, duties, liabilities, privileges and immunities of Escrow Agent:

(a) Escrow Agent is not a party to, and is not bound by, or charged with notice of, any agreement out of which this escrow may arise, other than this Agreement.

(b) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow or any part thereof, or for the form or execution thereof, or for the identity or authority of any person executing or depositing the same.

(c) In the event Escrow Agent becomes involved in litigation in connection with this escrow, the Parties agree to indemnify and save Escrow Agent harmless from all loss, costs, damages, expenses, and attorney's fees suffered or incurred by Escrow Agent as a result thereof.

(d) Escrow Agent shall be protected in acting upon any written notice, waiver, consent, certificate, receipt, authorization, power of attorney, or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

(e) Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instruction of such counsel.

(g) In the event of any claims or demand upon Escrow Agent are made in connection with any provision of this Agreement, or in the event the Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, in its sole discretion, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all interested parties

shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested parties and Escrow Agent shall have been notified thereof in writing signed by all such parties. Notwithstanding the foregoing, in the event Escrow Agent shall be in doubt as to what action it should take hereunder at any time during the term of this Agreement, Escrow Agent shall have the right, in its sole and absolute discretion, to file an interpleader action in the District Court of Bexar County, Texas, and interplead all documents held by it into the registry of said Court, and in such event, all costs, expenses and attorney's fees incurred by Escrow Agent in filing such interpleader action shall be paid by the Parties. The rights of Escrow Agent under this paragraph are cumulative to all other rights which it may have by law or otherwise.

9. Notices. Any notice, communication, request, reply or advice (severally and collectively referred to as “**Notice**”) in this Agreement provided or permitted to be given, made or accepted by any party to the other(s) must be in writing. Notice shall, unless otherwise provided herein, be given or served (1) by depositing the same in the United States mail, postage paid, certified mail, and addressed to the party to be notified at the last address for which the sender has at the time of mailing, with return receipt requested, or (2) by delivering the same to such party. Notice to a Landowner deposited in the mail in the manner hereinabove described shall be effective from and after such deposit. Notice given to a Landowner in any other manner and notice to City shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

City: City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78207
Attention: Director of Development Services

With copies to: City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78207

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78207

Developer: Lumbermen’s Investment Corporation
5495 Beltline Road, Suite 225
Dallas, Texas 75240
Attention: President

With a copy to: Lumbermen's Investment Corporation
1300 S. MoPac Expressway
Austin, Texas 78746
Attention: General Counsel

District: Cibolo Canyon Conservation and Improvement District
No.1

c/o Akin, Gump, Strauss, Hauer & Feld, L.L.P.
300 Convent, Suite 1500
San Antonio, Texas 78205
Attention: Board of Directors

With a copy to: Akin, Gump, Strauss, Hauer & Feld, L.L.P.
300 Convent, Suite 1500
San Antonio, Texas 78205
Attention: M. Paul Martin

The Parties may from time to time may change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Parties.

10. Entire Agreement. This Agreement contains the entire agreement of the Parties hereto with respect to the subject matter hereof, and this Agreement can be amended only by written agreement signed by all of the Parties hereto.

11. Binding Effect. This Agreement, and the terms, covenants and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of each of the Parties hereto.

12. Time. Time is of the essence in all things pertaining to the performance of this Agreement.

13. Applicable Law. The construction and validity of this Agreement shall be governed by the laws of the State of Texas.

14. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

15. Grammatical Construction. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall be construed as one and the same instrument.

[Signature Page follows]

EXECUTED as of the date set forth above.

DEVELOPER:

CORPORATION LUMBERMEN'S INVESTMENT

By: _____
Name: _____
Title: _____

CITY:

CITY OF SAN ANTONIO, TEXAS

By: _____
Name: _____
Title: _____

ESCROW AGENT:

MARATHON TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

This Agreement is hereby ratified and executed by District as of this _____ day
of _____, 2002.

DISTRICT:

CIBOLO CANYON CONSERVATION AND IMPROVEMENT DISTRICT
NO. 1

By: _____
Name: _____

Title: _____